

STATE OF WASHINGTON,

V.

Appellant.

UNPUBLISHED OPINION

FILED: June 29, 2009

Schindler, C.J. — The decision under RCW 13.40.110(2) to transfer charges against a juvenile for prosecution in adult court upon finding that “declination would be in the best interest of the juvenile and public,” is a discretionary determination reviewed for abuse of discretion. In deciding whether to transfer jurisdiction, the juvenile court judge must consider each of the eight factors originally set forth in Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966). Jermaine Amon Henderson appeals the decision to transfer jurisdiction of the charges filed against him in juvenile court for attempted robbery in the first degree, assault in the second degree, and unlawful possession of a firearm in the second degree.

Henderson does not challenge the juvenile court’s findings and determination that five

of the eight Kent factors supported the decision to transfer jurisdiction – that Henderson committed the offense in an aggressive, violent, premeditated and willful manner; that the offense was against persons or property; the prosecutive merit of the charges; the desirability of trial and disposition of the case in the court where the codefendants are adults; and Henderson’s record and previous history. Nonetheless, Henderson contends the juvenile court erred in analyzing the other three Kent factors – the seriousness of the alleged offense and whether protection of the community requires transferring jurisdiction to adult court; Henderson’s sophistication and maturity; and the prospects for adequate protection of the public and rehabilitation through the services available in the juvenile system. In the alternative, Henderson argues that substantial evidence does not support the juvenile court’s findings for these three Kent factors. Because the court did not abuse its discretion in deciding to transfer jurisdiction to adult court and substantial evidence supports the findings addressing the Kent factors, we affirm.

FACTS

On January 8, 1997, the State charged 15-year-old Jermaine Amon Henderson in King County Juvenile Court with attempted robbery in the first degree, assault in the second degree, and unlawful possession of a firearm in the second degree. King County Juvenile Department Cause No. 97-8-00246-1. The State filed a motion for a mandatory decline hearing to determine whether to transfer jurisdiction of the charges against Henderson to adult court.

The certification for probable cause states that on December 23, 1996, Henderson, his 18-year-old cousin Madreone Kinsey, and Henderson's 16-year-old girlfriend Latasha Garrett attempted to rob Chong Kim and his wife Youn Kim, the owners of the Highpoint Market in West Seattle. At approximately 8:30 p.m., Kinsey and Garrett went into the store, asked how much different items cost, and then left. Moments later, Garrett returned to ask what time the store closed. Youn told her that the store closed at 9:30 p.m. Just before 9:30 p.m., Kinsey, Garrett, and Henderson entered the store. Immediately after entering the store, Henderson pulled out a sawed off rifle from his coat, pointed it at Chong, and fired a shot. Chong dove behind the counter and pulled out his handgun. Without looking, Chong fired in the direction of Henderson. After Henderson fired a second shot, Chong shot again. When Chong looked up, he saw Kinsey and Garrett running out of the store. Henderson was on the floor in a pool of blood with the sawed off rifle next to him. Chong called 911. The medics transported Henderson to Harborview Medical Center.

The gunshot wound in Henderson's neck left him partially paralyzed. When Garrett and her friend Shirley Bize visited Henderson in the hospital, Henderson told them, "I'm killing that man [Chong Kim], I'm killing him. When I get out, I'm killing him."

During the investigation, the detectives determined that the sawed off rifle Henderson used in the attempted robbery at the Highpoint Market was used earlier that week in the attempted robbery of Vince Miller and the murder of Farwest Cab

Company driver Kashmir Singh.

Miller told the police that at approximately 10:00 p.m. on December 16, while walking to his house in West Seattle, a young black male wearing a skeleton mask approached him. The young man asked Miller, “[w]hat are you looking at? . . . do you want some of this?,” and then pulled out a sawed off rifle. Two other young black males appeared. The two males were armed but were not wearing masks. The young man in the mask demanded Miller turn over his wallet. As a jogger ran by, Miller yelled at the jogger to call 911. As the three males ran off, one of them said, “pop him.” The young man in the mask turned around and shot Miller in the leg.

On December 17, the police responded to a 911 call reporting that a taxicab driver was injured. The driver Kashmir Singh had been shot at close range in the back of his head. The police found a potato attached to black tape in the taxicab. The police also obtained a recording of the call made to the Farwest Cab Company. Singh was placed on life support and died several days later.

Miller identified Henderson and Kinsey from a photo montage. Miller told detectives that the sawed off rifle used in the attempted robbery at the Highpoint Market looked like the sawed off rifle used to shoot him. The police later found a skeleton mask at Henderson’s house.

In an interview with the detectives, Garrett admitted that she was with Henderson and Kinsey when Singh was shot. Garrett told the detectives that Henderson owned the sawed off rifle used to shoot Singh. Garrett said that

beforehand, Henderson and Kinsey had talked about different ways to rob someone and decided to rob a taxicab driver. Garrett told the detectives that Henderson and Kinsey sawed off the rifle and made a silencer with a potato and electrical tape.

On the day of the murder, Henderson carried the rifle and the handmade silencer in his backpack. Garrett said that when the taxicab arrived, Henderson and Kinsey told her to sit in the front seat. After Singh stopped, Kinsey passed Garrett a \$20 bill to pay him. As Singh got change out of his pocket, Garrett said that she heard a “pop” and then saw “[b]lood gushing out his neck.” According to Garrett, after the shooting, Henderson and Kinsey were “bragging and laughing.” When Kinsey told Garrett that he shot Singh, Henderson told her, “next time I’m going to show you that I’m not afraid to kill someone.” Garrett confirmed the voice on the recording of the telephone call to Farwest was Kinsey’s.

On February 10, 1997, the State filed charges against Henderson in juvenile court for the attempted robbery in the first degree of Miller and murder in the first degree of Singh. King County Juvenile Department Cause No. 97-8-00914-8. The State filed a second motion for a mandatory decline hearing to determine whether to transfer jurisdiction of the attempted robbery and murder charges to adult court.

On March 25 and 28, the juvenile court held the first decline hearing on the charges against Henderson for the attempted robbery at the Highpoint Market. The State submitted the certification of probable cause for the Highpoint Market case and the certification of probable cause for the attempted robbery of Miller and the murder

of Singh. In addition, the State submitted Seattle Police Department incident reports, witness statements in both cases, Henderson's prior juvenile and truancy record, and school disciplinary reports. The parties also submitted a "Decline Report to Court" prepared by the juvenile court probation counselor Kelli Thompson and a "Psychological Evaluation" prepared at Henderson's request by licensed psychologist Dr. Barbara Wood.

A number of witnesses testified during the two day decline hearing, including the assistant principal at Franklin High School, Eve Green, the medical director of the Juvenile Rehabilitation Administration (JRA) Dr. James Owens, a nurse in the juvenile detention clinic, Bonnie Cavanaugh, Dr. Wood, and the juvenile court probation counselor. The parties also presented the testimony of other witnesses by written declaration.

While still partially paralyzed, Henderson had made significant progress in his recovery. Several witnesses testified about Henderson's condition, the extent of his recovery, and the programs available in the juvenile and adult systems to address his needs. Although his prognosis for a full recovery was unknown, witnesses testified that he would likely continue to improve. Witnesses also testified that Henderson could mask the extent of his improved physical capabilities.

The assistant principal at Franklin High School testified about Henderson's escalating and violent behavior at school. School reports showed that between 1991 and 1996, Henderson repeatedly engaged in violent behavior that resulted in

numerous suspensions for threatening and assaulting students. Most recently, in October 1996, the school suspended Henderson for brutally kicking a dog several times in the ribs. When Green told Henderson that he was suspended from school, Henderson became agitated and said that he would, “kill all the fucking dogs in Washington.” Henderson tried to return to school several days later. Green explained he was not allowed to return to school. Henderson became “extremely volatile,” and told her, “I’m going to come back and fucking kill you.” Henderson was expelled from school for threatening Green, and Green reported the threat to the police.

The State filed charges against Henderson for harassment of Green. Henderson’s prior juvenile offense history included other harassment charges, a 1995 adjudication for bringing a weapon to school, and a 1995 residential burglary that involved a sawed off rifle.

Dr. Wood testified on behalf of Henderson. In the psychological evaluation she prepared, Dr. Wood described a long history of antisocial behavior at school, aggressive behavior against his mother, aunt, and sister, and his prior juvenile offenses. Dr. Wood said, “the alleged offenses, which were allegedly committed in an aggressive, violent, premeditated and willful manner would support arguments for the juvenile court declining jurisdiction,” and, “[i]f he had not been physically injured, the results of the current psychological evaluation would likely support the argument that he displays greater sophistication and maturity supporting disposition as an adult.”

However, because of Henderson's injury, Dr. Wood recommended the juvenile court retain jurisdiction:

It is recommended that Jermaine Henderson be rehabilitated in the juvenile court system, including provisions of skilled nursing care, physical therapy, occupational therapy, speech therapy, vocational-educational training to complete a GED and get computer technology skills, as well as participation in alcohol-drug education and treatment groups, anger management and individual therapy to address anxiety, depression, coping with the effects of traumatic physical injury, facilitating consistent and caring family support through visitation by placement in detention near the family home, as well as understanding and resolving issues of loss, dependency, helplessness, abandonment, and the traumatic family of origin history of witnessing domestic violence through individual therapy.

By contrast, in the "Decline Report to Court," and during her testimony, the juvenile court probation counselor addressed each of the Kent factors and strongly recommended transferring to adult court:

In this particular case there is the added issue of Jermaine's physical health. Jermaine has regained quite a bit of movement in the four months since the shooting, but he obviously will need on-going treatment and therapy if he is going to regain more movement and become more independent.

. . .

It is also disturbing that one man was shot, another man was murdered, and a third attempted robbery in which a shooting occurred, injuring the suspect, happened within a 7[-] day period. By the actions that Jermaine and his co-respondents took, it is unclear how many crimes they would have committed were it not for this unfortunate accident that has caused possible permanent damage to the respondent. There is no remorse shown; or responsibility taken by this young man for the crimes that were committed.

Jermaine's demonstrated violence and continuing pattern of threats of violence are of great concern to this writer. He obviously has physical limitations, but the extent of these is not known. The chance that he could be back in the community before he has gone

through a proper rehabilitation program is frightening to this writer.

Jermaine has an established pattern of aggressive, violent behavior which has continued to date, through threats and further inappropriate behavior. His behavior continues despite the presenting offenses and the possibility of being declined to the adult system. His behaviors have spanned nearly six years.

Past consequences in the home, at school, and through the juvenile justice system, have had no effect on Jermaine's behavior and have failed to protect the citizens of this community.

At the conclusion of the hearing on March 28, the court entered an order transferring jurisdiction of the charges against Henderson for the attempted robbery at the Highpoint Market to adult court. On April 14, the court entered extensive written findings of fact and conclusions of law on the decision to transfer jurisdiction.

On April 14 and 15, the juvenile court held a second decline hearing on whether to transfer jurisdiction on the charges against Henderson for murder in the first degree of Singh and the attempted robbery of Miller. The parties stipulated that in making that determination, the court should consider the same evidence presented in the first decline hearing. On April 15, the juvenile court entered an order transferring jurisdiction on the charges against Henderson for the murder of Singh and the attempted robbery of Miller to adult court. On July 1, the court entered written findings of fact and conclusions of law on the decision to decline jurisdiction.

On April 16, the State filed charges against Henderson, Kinsey, and Garrett in King County Superior Court for attempted robbery in the first degree of Chong Kim while armed with a firearm, murder in the first degree of Singh with a firearm, and

attempted robbery in the first degree of Miller with a firearm.

On January 8, 1998, Henderson pleaded guilty to murder in the first degree of Singh with a firearm and attempted robbery in the first degree of Chong Kim with a firearm. As part of the plea agreement, the State dismissed the charge of attempted robbery in the first degree of Miller with a firearm. In Henderson's statement of defendant on plea of guilty, he admits that:

On or about Dec. 17, 1996 I planned with Madreone Kinsey and Latasha Garrett to rob a cab driver. We arranged to be picked up in a cab from FarWest and directed the driver, I later learned to be named Kashmir Singh, to a secluded area in West Seattle. After the cab stopped, and while the driver was reaching for change, Mr. Kinsey shot him. We all ran. I acknowledge that my participation makes me an accomplice to murder in the first degree. On or about Dec. 23, 1996 I participated in an attempted robbery of the High Point grocery store in West Seattle. I went into the store with Mr. Kinsey and when the owner pulled a gun, I drew mine and shot at him. We went into the store with the intent of stealing money and goods.

On February 20, 1998, the court imposed a standard range sentence of 360 months.

Approximately seven years later, Henderson filed a CrR 7.8 motion for relief from the judgment and sentence. Henderson argued that based on the Washington State Supreme Court decision in State v. Kells, 134 Wn.2d 309, 949 P.2d 818 (1998), he did not knowingly, intelligently or voluntarily waive his right to appeal the decision to transfer jurisdiction of the charges against him to adult court. The trial court transferred the motion to this court as a personal restraint petition. We remanded for an evidentiary hearing. On remand, the superior court ruled Henderson did not knowingly, voluntarily, or intelligently waive his right to appeal the decision to transfer

jurisdiction. We granted Henderson's motion to appeal the juvenile court decision to transfer jurisdiction to adult court.¹

ANALYSIS

Juvenile Court Decline Decision

Preliminarily, the State argues, and Henderson concedes, that the juvenile court did not have jurisdiction in the second decline hearing to determine whether to transfer jurisdiction on the charges against Henderson for murder in the first degree of Singh and the attempted robbery of Miller.² We agree. Accordingly, the only decision subject to review is the juvenile court order to transfer jurisdiction on the charges filed against Henderson in the Highpoint Market case.

The Kent Factors

Henderson contends the juvenile court erred in analyzing three of the Kent factors in deciding to transfer jurisdiction on the criminal charges of attempted robbery and assault at the Highpoint Market and unlawful possession of a firearm. Henderson seeks reversal of his conviction in adult court and remand for a new trial.³

¹ We also granted Henderson's motion to file a supplemental brief challenging the decision of the juvenile court to transfer jurisdiction in the attempted robbery at the Highpoint Market and agreed to consider copies of the exhibits from the State's files.

² The juvenile court has exclusive jurisdiction over all proceedings relating to juveniles alleged or found to have committed offenses, unless the court transfers jurisdiction to adult court under RCW 13.40.110. RCW 13.04.030(1)(e)(i). In addition, a juvenile is defined as "any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court pursuant to RCW 13.40.110." See also State v. Sharon, 100 Wn.2d 230, 231, 668 P.2d 584 (1983); State v. Holland, 30 Wn. App. 366, 373, 635 P.2d 142 (1981) (after transfer for adult criminal prosecution, all subsequent offenses are tried in adult court).

³ See In re Pres. Restraint of Dalluge, 152 Wn.2d 772, 785-87, 100 P.3d 279 (2004).

Under RCW 13.40.110, the juvenile court has the discretion to transfer jurisdiction to adult court if it finds that “declination would be in the best interest of the juvenile or the public.” RCW 13.40.110(2). In determining whether to transfer or retain jurisdiction, the court must consider the eight factors factor originally set forth in Kent, 383 U.S. 566-67, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966):

1. The seriousness of the alleged offense and whether the protection of the community requires declination;
2. Whether the offense was committed in an aggressive, violent, premeditated or willful manner;
3. Whether the offense was against persons or only property;
4. The prosecutive merit of the complaint;
5. The desirability of trial and disposition of the entire case in one court, where the defendant's alleged accomplices are adults;
6. The sophistication and maturity of the juvenile;
7. The juvenile's criminal history; and
8. The prospects for adequate protection of the public and rehabilitation of the juvenile through services available in the juvenile system. All eight of these factors need not be proven; their purpose is to focus and guide the juvenile court's discretion. The court's decision will be reversed only if there has been an abuse of that discretion.⁴

The Kent factors serve “to focus and guide the juvenile court’s discretion.”

Furman, 122 Wn.2d 447. All eight of the Kent factors need not be proven, but the record must demonstrate that each of the factors was considered. Holland, 98 Wn.2d at 374. Failure to consider each of the factors is an abuse of discretion. M.A., 106 Wn. App. at 493, 23 P.3d 508 (2001); State v. Stevenson, 55 Wn. App. 725, 736, 780 P.2d 873 (1989).

A decision to decline jurisdiction is discretionary and subject to reversal only if

⁴ State v. Furman, 122 Wn.2d 440, 447, 858 P.2d 1092 (1993). The Washington Supreme Court first adopted the Kent factors in State v. Williams, 75 Wn.2d 604, 606-07, 453 P.2d 418 (1969).

exercised on clearly untenable or manifestly unreasonable grounds. State v. M.A., 106 Wn. App. at 498. We will not disturb the juvenile court's findings if they are supported by substantial evidence. M.A., 106 Wn. App. at 499. Substantial evidence exists if there is enough evidence to persuade a fair-minded rational person of the truth of the premise. State v. Ware, 111 Wn. App. 738, 742, 46 P.3d 280 (2002).

The State has the burden of proving by a preponderance of the evidence that declining jurisdiction is in the best interest of the juvenile or the public. State v. Toomey, 38 Wn. App. 831, 834, 690 P.2d 1175 (1985). In reviewing the juvenile court's decision to decline jurisdiction, we must examine the entire record to determine the sufficiency of the court's reasons. M.A., 106 Wn. App. at 499. The rules of evidence do not apply at the decline hearing. ER 1101.

Analysis of *Kent* Factors

It is uncontroverted that the second, third, fourth, fifth, and seventh Kent factors support declining jurisdiction of the charges against Henderson for the attempted robbery of the Highpoint Market – whether the offense was committed in an aggressive, violent, and premeditated manner; whether the offense was against property or against persons; whether the complaint had prosecutive merit; whether judicial economy supported disposition of the case in adult court; and whether Henderson's record and previous criminal history made him a threat to the community.⁵

⁵ Unchallenged findings are verities on appeal. Furman, 122 Wn.2d at 450 n.15.

In addressing the second Kent factor – the aggressive, violent, premeditated, and willful manner in which the crimes were committed, the findings state:

The respondent had procured the rifle several weeks before the attempted robbery. The respondent and his accomplices sawed off the barrel of the rifle in preparation for using it in their robberies. The same weapon was apparently used in an attempted robbery of Vince Miller on December 16 and the murder of Kashmir Singh on December 17, 1996. After the murder, the respondent told his cousin and girlfriend that he would do the shooting next time to prove that he wasn't afraid to kill anybody.

The unchallenged findings for the seventh Kent factor also describe how Henderson's escalating criminal behavior and previous supervision in juvenile court made him a "high risk to reoffend and a definite threat to community safety" that supported declining jurisdiction.

The seventh Kent factor is the respondent's previous record including contacts with law enforcement or court, prior probation or commitments to juvenile institutions.

The respondent's criminal history includes diversions for Assault 4, Obstructing a Law Enforcement Officer, [weapon] at school and a conviction for Residential Burglary. The respondent also has had police referrals for Assault 4 domestic violence and Attempted Residential Burglary. The respondent is also charged on current pending matters with: Harassment, Attempted Robbery in the First Degree and Murder in the First Degree.

The court has reviewed the facts of these other criminal referrals. They show that the respondent has a serious and violent pattern of escalating criminal activity. The respondent's criminal acts are violent and often involve the use of weapons, particularly firearms. The respondent has committed many acts of violence in school including threatening to kill an assistant principal.

The respondent was provided with juvenile services during his diversions, including anger management. The respondent was placed on community supervision for six months but failed to

perform any community service hours. The respondent has failed to appear for court appearances in the past.

The respondent's escalating criminal history and previous supervision in the juvenile system indicate that he is at high risk to reoffend and a definite threat to community safety.

This factor supports declining jurisdiction.

Nonetheless, Henderson contends that because the juvenile court erred in considering the other three factors, the decision to transfer jurisdiction was an abuse of discretion. Henderson argues that the juvenile court erred in analyzing the first, sixth, and eighth Kent factors – the seriousness of the alleged offense and whether protection of the community requires declining jurisdiction, the juvenile's sophistication and maturity; and the prospects for adequate protection of the public and rehabilitation through the services available in the juvenile system. In the alternative, Henderson claims substantial evidence does not support the court's findings for the three factors and therefore, the juvenile court abused its discretion in deciding to transfer jurisdiction to the adult court.

The First Kent Factor

In considering the first Kent factor, the court must determine whether the seriousness of the alleged crime and the protection of the community require the juvenile court to decline jurisdiction. Furman, 122 Wn.2d at 447. Here, in addressing the first Kent factor, the court concluded the seriousness of the offenses supported declining jurisdiction.

The respondent is charged with Attempted Robbery in the First Degree, Assault in the Second Degree and Unlawful Possession of

a Firearm in the Second Degree. These are very serious offenses. The respondent is alleged to have attempted to rob the owner of the Highpoint Market. The respondent entered the market with a sawed off .22 caliber rifle, went up to the counter and pointed the weapon at Chong Kim. The respondent fired two shots but Mr. Kim was able to duck out of the way. Mr. Kim fired back striking the respondent in the neck.

The offenses are serious and this weighs heavily in favor of decline.

Henderson asserts the court erred in failing to consider the protection of the community in addressing the first Kent factor. While the court's findings for the first factor do not mention protection of the community, the court specifically addresses that question following consideration of the eight Kent factors. The court entered a finding that Henderson "presents an extreme risk to the safety of the community." Because the court considered the protection of the community, we reject Henderson's argument that the court erred in considering the first Kent factor.⁶

The Sixth Kent Factor

The sixth Kent factor requires the court to consider the sophistication and maturity of the juvenile by taking into account his home, environmental situation, emotional attitude, and pattern of living. Furman, 122 Wn.2d at 447. Henderson contends the court erred in analyzing the sixth Kent factor by improperly considering the sophisticated manner in which the offenses were committed in assessing his sophistication and maturity. Henderson argues that consideration of the manner in which the crimes were committed is limited to the second Kent factor, the seriousness

⁶ See M.A., 106 Wn. App. at 499 (Even though juvenile court did not address protection of the community in written findings, the court did so in its oral decision.).

of the alleged offenses.

The juvenile court's findings for the sixth Kent factor state:

The sixth Kent factor is the sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

The court adopts the facts contained in the probation officer's report in finding that the respondent is as sophisticated and mature as an adult.

The crimes that the respondent committed were executed in a sophisticated manner. It was a well planned operation where the co-defendants cased the store prior to the respondent's commission of the attempted robbery and assault. The respondent influenced others to participate in the crimes. When confronted by the police with his criminal conduct the respondent reacted as an adult would. The respondent's escalating criminal conduct demonstrated a complete and total disregard for human life.

A psychologist, Dr. Barbara Wood, examined the respondent and concluded that the respondent was sophisticated and mature at the time he committed the offenses. She also testified that the respondent's injuries did not impair his mental or cognitive functioning. Dr. Wood said that the respondent viewed his adult cousin as a peer and that the respondent was trying to be the leader in his family.

The respondent has a long history of not participating in school. He rarely attended school and when he did he often had disciplinary problems which would result in suspension or expulsion.

The respondent had little if any parental control or supervision. It appeared as if the respondent's mother treated him as an adult who could make his own decisions, including the use of a gun. The respondent acted within the family unit as a leader and a person older than his chronological age.

The respondent behaves with the sophistication and maturity as an adult. This factor weighs in favor of decline.

The juvenile court did not err by taking into consideration the manner in which Henderson committed the charged crimes in analyzing his sophistication and maturity under the sixth Kent factor. In State v. H.O., 119 Wn. App. 549, 559, 81 P.3d 883 (2003), we affirmed the juvenile court's consideration of the manner in which the crime was committed in assessing the juvenile's sophistication and maturity for the sixth Kent factor. See also Toomey, 38 Wn. App. at 835 (juvenile's willing participation in the crime supported finding juvenile was sophisticated and mature); State v. Jamison, 25 Wn. App. 68, 74, 604 P.2d 1017 (1979) (although juvenile was emotionally immature, behaved in sophisticated matter in committing the crime).

Henderson also argues that the court improperly considered his truancy history and school disciplinary problems in assessing the sixth Kent factor. We agree. In M.A., we held that prior diversions and juvenile court probation should not be considered as part of the analysis in assessing a juvenile's sophistication and maturity under the sixth Kent factor, and concluded that substantial evidence did not support finding that the sixth Kent factor supported declining jurisdiction. M.A., 106 Wn. App. at 502. Nevertheless, because the findings for the other Kent factors supported declining jurisdiction, we held that the court did not abuse its discretion in transferring jurisdiction to adult court. M.A., 106 Wn. App. at 505. Here, unlike M.A., in context, the court's finding concerning Henderson's escalating conduct and school disciplinary problems was related to the consideration of his home and living situation and the conclusion that he was acting independently. In reaching this conclusion, the court

found that because his mother “had little if any parental control or supervision,” Henderson was largely independent and acting as an adult.

Henderson also argues substantial evidence does not support the findings on the sixth Kent factor because the court ignored Dr. Wood’s assessment. Dr. Wood stated that Henderson was “an immature, unsophisticated fifteen year[s] old” with “strong needs for emotional support.” The court rejected Dr. Wood’s assessment and expressly adopted the “facts contained in” the juvenile probation counselor’s Decline Report.

In the Decline Report, the juvenile court probation counselor discussed at length Henderson’s “Emotional and Behavioral Emancipation from Parents” and “Environmental Situation and Pattern of Living.” While the probation counselor noted that Henderson financially depended on his mother for his basic needs, the report states that after Kinsey started living with the family, Henderson was relatively independent, streetwise, and manipulative. The report also states that Henderson “acted within the family unit as a leader and a person older than his chronological age,” and he was “as ‘sophisticated and mature as an adult.’” The report also states that he was “doing his own thing with Madreone [Kinsey] more and more. Mrs. Henderson has been unable to assist Jermaine in controlling his behavior at home, at school, or in the community. It appears she has little control over her son.”

Although there was conflicting testimony, the juvenile court was entitled to reject Dr. Wood’s assessment. Because the court is in the best position to evaluate

the evidence and the credibility of the witnesses, we will not substitute our judgment. State v. Frazier, 82 Wn. App. 576, 589, 918 P.2d 964 (1996). The record supports the finding that Henderson had the maturity and sophistication of an adult.

Henderson further asserts that substantial evidence does not support the court's finding that "when confronted by the police with his criminal conduct the respondent "reacted as an adult would." We disagree. The record supports the court's determination that Henderson's responses demonstrated a level of sophistication comparable to an adult. When the detectives told Henderson there was evidence that his rifle was used in the murder, he said, "[j]ust because my gun was used in the crime, it don't have nothing to do with me.'" And when the detectives told Henderson the rifle would be tested for fingerprints, Henderson admitted to the detectives that he and Kinsey fired the gun one time in a setting unrelated to any alleged crime.

The Eighth Kent Factor

The eighth Kent factor requires the court to consider the protection of the public and the likelihood of rehabilitation through services available in the juvenile system. In M.A., we held that the juvenile court "is not required to balance the two parts of the eighth factor. While the court must consider both, 'the public interest alone clearly permits declination under the language of RCW 13.40.110.'" M.A., 106 Wn. App. at 505 (quoting Toomey, 38 Wn. App. at 836 n.4).

Henderson contends the juvenile court erred as a matter of law in analyzing the

eighth Kent factor by comparing the services available in the juvenile and adult systems and concluding the eighth factor weighed in favor of decline.

In addressing the eighth Kent factor, the court found:

The eighth Kent factor is the prospect for adequate protection of the public and the likelihood of reasonable rehabilitation of the respondent by use of juvenile procedure and facilities.

The standard range sentence in the adult system is more than four times longer than the range in the juvenile system and the public would be better protected by incarcerating the respondent for a longer period than is available in the juvenile system.

The respondent sustained injuries during the commission of this offense which caused a certain amount of paralysis. Currently the juvenile facilities do not have adequate facilities for someone in the respondent's physical condition. However, if the respondent [was] were committed to the Juvenile Rehabilitation Administration the necessary accommodations would be made to care for the respondent. The respondent would require a 24 hour/day attendant and additional security. These accommodations would be burdensome on the juvenile system and would also mean that some services might be taken away from other juveniles in the system.

By contrast the Department of Corrections has four major penal institutions equipped to handle inmates in the respondent's condition. These facilities are safe and secure and have all the medical and physical rehabilitation services that the respondent requires. These services are available because there are currently other inmates who are in similar or worse physical condition than the respondent.

There are more programs available to the respondent in the adult system to meet the respondent's rehabilitation needs, both physical and mental. This factor weighs heavily in favor of decline.

The court did not err in comparing the services and facilities available to address Henderson's needs in the juvenile and adult systems. While the eighth Kent

factor does not require the court to consider the services available in the adult system, a court does not err in doing so. H.O., 119 Wn. App. at 561. In H.O., we held that the likelihood of rehabilitation of the juvenile “by the use of procedures, services and facilities currently available [in] the Juvenile Court,” can only be properly analyzed by comparing the services and facilities in the juvenile system with those currently available in the adult system. H.O., 119 Wn. App. at 561.

Substantial evidence also supports the juvenile court’s finding that Henderson’s needs were better met in the adult system and his long term treatment and rehabilitation needs could not be adequately addressed based on a maximum five year disposition in juvenile court. The court found that even though Henderson’s long term prognosis for recovery was uncertain, he continued to progress and needed extensive physical, as well as mental, rehabilitation services that were better addressed by the facilities offered in the adult system.

The record supports the court’s finding that Henderson made significant progress in his recovery and continued to pose an extreme risk to the safety of the community. Although Henderson was still in a wheelchair, he could stand without assistance, lift both of his legs and push himself up with his elbows. While in detention, Henderson also propelled his wheelchair by himself for approximately 100 feet. According to the testimony at the hearing, Henderson could mask the true extent of his physical capabilities. The record supports the court’s finding that Henderson was skilled at “manipulating others and continues to do so even in his current physical

state.” Henderson relies heavily on the testimony of Dr. Wood. Dr. Wood recommended that Henderson receive rehabilitation services through the juvenile system, rather than through the adult system. Dr. Wood stated that because of Henderson’s injuries, he no longer posed a significant threat to the community. But as previously noted, the court was entitled to reject Dr. Wood’s recommendation.

Toomey, 38 Wn. App. at 837.

In analyzing the eighth Kent factor, the court also noted that providing specialized services to Henderson “would be burdensome on the juvenile system and would also mean that some services might be taken away from other juveniles in the system.” We conclude the court erred in considering the impact of providing Henderson with appropriate treatment and special services in the juvenile system. Under state law, JRA has a duty to provide treatment. State v. D.H., 75 Wn. App. 1, 19-20, 877 P.2d 205 (1994). Nonetheless, despite the court’s improper consideration of the impact on the juvenile system in providing treatment to Henderson, the remainder of the findings for the eighth Kent factor, together with the findings for the other Kent factors, support the decision to decline jurisdiction.

In sum, the record shows that the juvenile court judge carefully considered and addressed the Kent factors in concluding that transferring jurisdiction to the adult court would be in the best interest of Henderson and the community. Because the court could reasonably conclude that transferring jurisdiction was in the best interest of Henderson and the protection of the

community, the juvenile court did not abuse its discretion in declining jurisdiction.

Statement of Additional Grounds

Henderson asserts that his conviction for murder and attempted robbery should be dismissed because his attorney failed to advise him of his right to appeal the decision to transfer jurisdiction to adult court. To establish ineffective assistance of counsel, Henderson must show both deficient performance and resulting prejudice.

Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674

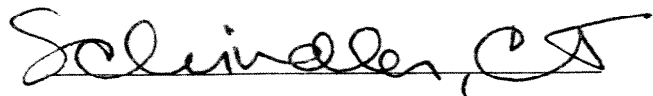
(1984). If a defendant fails to satisfy either part of the test, we need not inquire

further. State v. Hendrickson, 129 Wn.2d 61, 78, 917 P.2d 563 (1996). Here,

Henderson cannot establish prejudice. After an evidentiary hearing under Kells, we

allowed Henderson to appeal the decision to transfer jurisdiction to adult court.

We affirm.



WE CONCUR:

